

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ZACHARY CRUTCHER,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-05-32-L
)	
JOHN WHETSEL,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner a state prisoner, *pro se*, filed this action pursuant to 28 U.S.C. § 2254 on January 10, 2005. This matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the petition be dismissed without prejudice.

In an Order dated January 12, 2005, Petitioner was specifically advised that on or before February 1, 2005, he must either pay the \$5.00 filing fee or be granted leave to proceed without prepayment of the fee. 28 U.S.C. §1914, 1915; LCvR 3.2. Petitioner was further advised that failure to comply with such Order could result in dismissal of this action without prejudice to refiling.

A review of the Court file reveals that as of this date, Petitioner has not paid the filing fee submitted a request to proceed *in forma pauperis*, requested an extension of time within which to do so, nor demonstrated good cause for his failure to cure. Therefore, the undersigned recommends that this action be dismissed without prejudice to refiling. LCvR 3.3 (e) and 3.4(b).

RECOMMENDATION

Accordingly, it is recommended that this action be dismissed without prejudice to refiling. Petitioner is advised that any objection to this Report and Recommendation must be filed with the Clerk of this Court by the **15th day of March, 2005**, in accordance with 28 U.S.C. §636 and Local Rule 72.1. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 23rd day of February, 2005.



BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE